### BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2008-191

EVANGELINE CANOUG ANACLETO, a.k.a. EVANGELINE GAUDIOSA ANACLETO, a.k.a. EVANGELINE ANACLETO

287 Sunshine Drive Pacifica, CA 94044

Registered Nurse License No. 551266

OAH No. N2008020010

Respondent.

## **DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, as its Decision in this matter.

This Decision shall become effective on <u>January 21, 2009</u>.

It is so ORDERED December 22, 2008.

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BOARD OF REGISTERED NURSING

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1	EDMUND G. BROWN JR., Attorney General		
2	of the State of California WILBERT E. BENNETT Supervising Deputy Attorney General KIM M. SETTLES, State Bar No. 116945 Deputy Attorney General 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550		
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6	Telephone: (510) 622-2138 Facsimile: (510) 622-2270		
7	Attorneys for Complainant		
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9	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	STATE OF CALI	TORMA	
12	In the Matter of the Accusation Against:	Case No. 2008-191	
13	EVANGELINE CANOUG ANACLETO, a.k.a. EVANGELINE GAUDIOSA ANACLETO,	OAH No. N2008020010	
14	a.k.a. EVANGELINE ANACLETO 287 Sunshine Drive	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER	
15	Pacifica, CA 94044 Registered Nurse License No. 551266	DISCH ERVART ORDER	
16	Respondent.		
17			
18	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the		
19	above-entitled proceedings that the following matters are true:		
20	<u>PARTIES</u>		
21	1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of		
22	the Board of Registered Nursing. She brought this action solely in her official capacity and is		
23	represented in this matter by Edmund G. Brown, Jr., Attorney General of the State of California,		
24	by Kim M. Settles, Deputy Attorney General.		
25	2. Respondent EVANGELINE CANOUG ANACLETO, a.k.a.		
26	EVANGELINE GAUDIOSA ANACLETO, a.k.a. EVANGELINE ANACLETO (Respondent) is		
27	represented in this matter by Adam G. Slote, Esq., LAW OFFICES OF ADAM G. SLOTE, 100		
28	Pine Street, Suite 750, San Francisco, California 94111.		

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3. On or about January 25, 1999, the Board of Registered Nursing issued Registered Nurse License No. 551266 to EVANGELINE CANOUG ANACLETO, a.k.a. EVANGELINE GAUDIOSA ANACLETO, a.k.a. EVANGELINE ANACLETO (Respondent). The license will expire on July 31, 2010, unless renewed.

## **JURISDICTION**

4. Accusation No. 2008-191 was filed before the Board of Registered Nursing, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 3, 2008. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2008-191 is attached as Exhibit A and incorporated herein by reference.

## **ADVISEMENT AND WAIVERS**

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2008-191. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

# **CULPABILITY**

8. Respondent admits that there is a factual basis for the imposition of discipline based on the charges and allegations in Accusation No. 2008-191, and stipulates that cause for discipline exists, as set forth in the Accusation.

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9. Respondent agrees that her Registered Nurse License is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

#### CONTINGENCY

- 10. The parties hereto acknowledge that this Stipulated Settlement constitutes an offer in settlement to the Board of Registered Nursing, and is not effective until adoption by the Board.
- 11. The parties hereto stipulate that in the event this Stipulated Settlement is not adopted by the Board of Registered Nursing, nothing herein recited shall be construed as a waiver of respondent's right to a hearing or as an admission of the truth of any of the matters charged in the accusation, and the Board shall not be disqualified from further action by having considered this matter. By signing the stipulation, respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it.
- 12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board of Registered Nursing may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

#### **DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Registered Nurse License No. 551266 issued to Respondent EVANGELINE CANOUG ANACLETO, a.k.a. EVANGELINE GAUDIOSA ANACLETO, a.k.a. EVANGELINE ANACLETO is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other

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applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. Actual Suspension of License. Respondent is suspended from the practice of nursing for thirty (30) days beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of the probationary time period.

2. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

3. Comply with the Board's Probation Program. Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

4. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

5. Residency, Practice, or Licensure Outside of State. Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

6. Submit Written Reports. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

7. **Function as a Registered Nurse.** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

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If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

8. **Employment Approval and Reporting Requirements.** Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this Decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

9. **Supervision.** Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

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Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.
- (c) Minimum The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.
- (d) Home Health Care If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.
- 10. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

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Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

11. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

12. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$10,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

13. Violation of Probation. If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

14. License Surrender. During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
  - (2) One year for a license surrendered for a mental or physical illness.
- 15. Therapy or Counseling Program. Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

## <u>ACCEPTANCE</u>

I have carefully read and considered the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam G. Slote, Esq. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,

1	and agree to be bound by the Decision and Order of the Board of Registered Nursing.		
2	DATED: 9/2/08		
3	Schoreron		
4	EVANGELINE CANOUG ANACLETO, a.k.a. EVANGELINE GAUDIOSA ANACLETO, a.k.a.		
5	EVANGELINE ANACLETO Respondent		
6			
7	I have read and fully discussed with Respondent, EVANGELINE CANOUG		
8	ANACLETO, a.k.a. EVANGELINE GAUDIOSA ANACLETO, a.k.a. EVANGELINE		
9	ANACLETO the terms and conditions and other matters contained in the above Stipulated		
10	Settlement and Disciplinary Order. I approve its form and content.		
11	DATED: 9/24/08.		
12	ADAM G. SLOTE, ESQ.		
13	ADAM G. SLOTE, ESQ. Attorney for Respondent		
14			
15	<u>ENDORSEMENT</u>		
16	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully		
17	submitted for consideration by the Board of Registered Nursing.		
18	DATED: 9/26/08		
19	EDMIND C DROUBLID ALL C. 1		
20	EDMUND G. BROWN JR., Attorney General of the State of California		
21	WILBERT E. BENNETT Supervising Deputy Attorney Concret		
22	Supervising Deputy Attorney General		
23	Kin M. Settles		
24	KIM M. SETTLES Deputy Attorney General		
25	Attorneys for Complainant		
26	rmorneys for Complaniant		
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Exhibit A
Accusation No. 2008-191

	· <b>!</b>		
1	EDMUND G. BROWN JR., Attorney General of the State of California		
2	WILBERT E. BENNETT Supervising Deputy Attorney General		
. 3	KIM M. SETTLES, State Bar No. 116945		
4	Deputy Attorney General 1515 Clay Street, 20th Floor		
5	P.O. Box 70550 Oakland, CA 94612-0550		
6	Telephone: (510) 622-2138 Facsimile: (415) 703-5480		
7	Attorneys for Complainant		
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	BEFORE TH	E	
9	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALIF		
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12	In the Matter of the Accusation Against:	Case No. 2008-191	
13	EVANGELINE CANOUG ANACLETO, a.k.a. EVANGELINE GAUDIOSA ANACLETO	ACCUSATION	
14	287 Sunshine Drive	ACCUBATION	
15	Pacifica, CA 94044 Registered Nurse License No. 551266		
16	Respondent.		
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19	Complainant alleges:		
20	<u>PARTIES</u>		
21	1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation		
22	solely in her official capacity as the Executive Officer of the Board of Registered Nursing,		
23	Department of Consumer Affairs.		
24	2. On or about January 25, 1999, the Board of Registered Nursing issued		
25	Registered Nurse License Number 551266 to EVANGELINE CANOUG ANACLETO, also		
26	known as EVANGELINE GAUDIOSA ANACLETO (Respondent). The Registered Nurse		
27	License was in full force and effect at all times relevant to the charges brought herein and will		
28	expire on July 31, 2008, unless renewed.		
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## JURISDICTION

- 3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
  - 5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.
- 6. Title 16, California Code of Regulations, section 1442 defines gross negligence as an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.
- 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. On or about June 30 and July 1, 2005, while employed as a registered
nurse at the San Francisco County Jail, in San Francisco, California, respondent provided care to
patient/inmate E.M.¹ Respondent provided said nursing care in a grossly negligent manner by
failing to perform an appropriate nursing assessment, failing to appropriately respond to a
medical emergency, and failing to act as an advocate for the patient. The circumstances are as
follows:

- (a) E.M. presented to San Francisco County Jail, on June 21, 2005, as a patient/inmate with a medical history of high blood pressure and congestive heart failure. On June 27, 2005, E.M. was moved from his jail cell to the clinic, after he complained of flank pain. Later that same day, E.M. was returned to his cell, and Nimfa Punzalan, RN, responded to a "man down" code and charted that she found E.M. lying face down on the floor clutching his chest with complaints of kidney pain and a heart condition. E.M. was placed in the clinic. On June 28, 2005, Liberty Forteza, RN, responded to a "man down" code and found E.M. lying on his right side clutching his chest. Forteza charted that E.M. complained of chest and kidney pain, headache, and high blood pressure. E.M. demanded to go to the hospital and was taken to the clinic for observation. On June 30, 2005, E.M. was placed in the clinic with complaints of leg pain.
- (b) Respondent's first contact with E.M. occurred on or about June 30, 2005, at approximately 11:45 p.m., when she responded to a "man down" code along with Punzalan and Mike Fowler, LVN. E.M. was found naked and lying face down in his cell. B.M. did not complain of pain, but appeared anxious and stated that he was "stressed out". Respondent did not perform a nursing assessment or evaluation of the patient's condition or determine the appropriate

<sup>1.</sup> Patient initials are used to protect the patient's privacy. Full names will be released to respondent in discovery.

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disposition for the patient, Respondent left E.M. in his cell and returned to the clinic to access and review E.M.'s medical records. Approximately twenty minutes later, a sheriff's deputy notified respondent that E.M. had been placed in a "safety cell", where inmates are checked by deputies every fifteen minutes. Respondent did not question the deputy's decision to place E.M. in a "safety cell", and did not advocate to place the patient in the clinic, as an alternative. At that time, Punzalan and respondent went to the "safety cell" and visually checked E.M. for injuries, and returned to the clinic. Thereafter, Respondent responded to a call at approximately 3:40 a.m. on July 1, 2005, to check the patient in the safety cell. Respondent found E.M. leaning against the wall, and observed feces on the floor. E.M. had no pulse and was not breathing. Respondent left the cell to get emergency response equipment and failed to direct others to obtain said equipment. Respondent failed to remain with E.M. and to immediately initiate standard emergency rescue (CPR) measures. Respondent returned to the cell with the emergency response equipment and Fowler, who assisted respondent in performing CPR. E.M. was pronounced dead at 4:08 a.m. on July 1, 2005. The cause of death was listed as, "acute cocaine intoxication", with acute pyelonephritis, bronchopneumonia, and hypertensive cardiovascular disease listed as other significant conditions contributing to death.

- 9. Respondent's conduct, in leaving the emergency situation to retrieve emergency response equipment, and failing to remain with the patient and to initiate standard emergency rescue measures, as set forth in paragraph 8 above, constitutes gross negligence and provides grounds for disciplinary action under Code section 2761(a)(1). Respondent's delay in initiating emergency rescue procedures may have contributed to E.M.'s demise.
- 10. Respondent's conduct, in failing to evaluate or assess E.M.'s physical condition and to formulate a nursing diagnosis based on the patient chart, and information obtained from the patient and other members in the health care team, as set forth in paragraph 8, above, constitutes gross negligence and provides grounds for disciplinary action under Code

section 2761(a)(1). Respondent's failure to properly evaluate or as sess the patient may have contributed to E.M.'s demise by failing to identify serious, life-thre atening health conditions.

11. Respondent's conduct, in failing to advocate for E.M., when the deputy advised her that E.M. would be placed in a "safety cell" where he would be monitored by unlicensed personnel, as set forth in paragraph 8, above, constitutes gross negligence and provides grounds for disciplinary action under Code section 2761(a)(1). Said conduct placed the patient in a high risk situation and may have prevented a more timely intervention.

# **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 551266, issued to EVANGELINE CANOUG ANACLETO.
- 2. Ordering EVANGELINE CANOUG ANACLETO to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 12/18/07

RUTH ANN TERRY, M.P.H., R.N.

Executive Officer

Board of Registered Nursing

Department of Consumer Affairs

State of California

Complainant

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